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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/446,323	03/20/2000	STEFAN SANNER	258.00040101	2155
22204	7590	06/13/2005	EXAMINER	
NIXON PEABODY, LLP 401 9TH STREET, NW SUITE 900 WASHINGTON, DC 20004-2128			CROSS, LATOYA I	
			ART UNIT	PAPER NUMBER
			1743	

DATE MAILED: 06/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/446,323

Applicant(s)

SANNER, STEFAN

Examiner

LaToya I. Cross

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,7,8 and 10-26 is/are pending in the application.
- 4a) Of the above claim(s) 21 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-18 and 23 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 7, 8, 10-12, 19-22, 24-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action follows Applicants' request for continued examination filed on February 9, 2004. A non-final rejection was mailed on March 23, 2004, which failed to address a new feature in Applicant's amended claim. The application was inadvertently abandoned and has now been rescinded from abandonment. A new ground of rejection is set forth below.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1, 3, 8, 10-12, 19-20 and 22 are rejected under 35 U.S.C. 103(a) as being obvious over US Patent 4,534,939 to Smith et al in view of US patent 5,096,669 to Lauks et al.

Smith et al teaches a device for self-contained coagulation detection. The device comprises a housing (24) in which a cartridge (52), testing means (74) and sample taking means (102) are positioned. The cartridge contains activator reagent. The activator reagent is preferably retained substantially within an enclosure defined by an inverted cup-shaped structure (54). The activator agent (52) is thereby confined between the inverted cup-shaped structure (54) and the partition (38). The cup shaped structure (54) is glued or otherwise fastened to the interior surface of the lower portion (48) by a spot of adhesive (56). The testing means is a chamber defined by (60) and partition (38). The sample taking means comprises a syringe which, by definition, inherently includes a chamber. Additionally, the cartridge and testing

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means are brought into contact with the sample mixture for analyzing this mixture. See figures 11-16.

Smith et al differ from the instant application in that there is no disclosure of a surplus chamber.

Lauks et al teach a disposable sensing device for analysis of fluid samples, particularly blood. The device of Lauks et al comprises a housing having a testing means and a sample taking means. In the sample taking means, there exists a first cavity, second conduit and third conduit. Sample fluid is drawn into the second conduit via capillary action by putting the orifice on the end of the conduit in contact with the sample. The second cavity (20) receives an overflow of fluids (col. 5, line 31 – col. 6, line 11 and col. 8, lines 16-30). It would have been obvious to one of ordinary skill in the art to incorporate a surplus (overflow) chamber into the device of Smith et al to provide a means to hold excess fluid sample in the device.

2. Claims 1-3, 8, 11, 12, 19, 20, 22 and 24-26 are rejected under 35 U.S.C. 103(a) as being obvious over US Patent 6,048,735 to Hessel et al in view of US patent 5,096,699 to Lauks et al.

Hessel et al teaches a multi-sectioned fluid delivery device for immunoassay detection. The device comprises a housing (6) in which a plurality of cartridges (8), testing means (1) and sample taking means (e.g. inside cap 16) are positioned. The biological sample is placed in the cap and the cap is fitted onto the distal end of the syringe portion (9). The testing means is a sensor laminate (1) and permits binding of any target molecule in the sample to the reactive substrate layer (3) of the sensor laminate. The turning handle (14) is then rotated so that the plunger (15), sensor laminate (1) and piercing element (7) move toward the distal end of the

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syringe (9) extending into the cap (16) so that the piercing element (7) sequentially pierces each divider (18) of each compartment (8) thereby displacing the compartments and releasing the fluids in an ordered sequence to detect any bound target molecules on the sensor laminate (1). (See col. 9, line 20 – col. 10, line 54; figures 4-6).

Hessel et al differ from the instant application in that there is no disclosure of a surplus chamber.

Lauks et al teach a disposable sensing device for analysis of fluid samples, particularly blood. The device of Lauks et al comprises a housing having a testing means and a sample taking means. In the sample taking means, there exists a first cavity, second conduit and third conduit. Sample fluid is drawn into the second conduit via capillary action by putting the orifice on the end of the conduit in contact with the sample. The second cavity (20) receives an overflow of fluids (col. 5, line 31 – col. 6, line 11 and col. 8, lines 16-30). It would have been obvious to one of ordinary skill in the art to incorporate a surplus (overflow) chamber into the device of Smith et al to provide a means to hold excess fluid sample in the device.

3. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al in view of Lauks et al or Hessel et al in view of Lauks et al and further in view of US Patent 4,269,237 to Berger.

Smith et al and Hessel et al, as previously discussed above, teach a rupturable membrane for controlling the flow of material through the cartridge. However, neither Smith et al nor Hessel et al recite the specific use of a ball valve for closing the opening of a cartridge. The use of ball valves is considered conventional in the dispensing art, as taught by Berger. Berger

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teaches a device for draining or collecting sump oil from a container, wherein the container has a drain plug closed by a ball valve or rupturable membrane. See abstract.

Accordingly, it would have been obvious to one of ordinary skill in the art to have substituted the rupturable membrane means of Smith et al or Hessel et al with the ball valve, taught by Berger. Ball valves are known within the art to provide reliable sealing which can be reused repeatedly.

Response to Arguments

4. Applicant's arguments are moot in view of the new grounds of rejection set forth above.

Allowable Subject Matter

5. Claim 13-18 and 23 are allowed. The previous Office Action provides a statement for the reasons for the indication of allowable subject matter.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya I. Cross whose telephone number is 571-272-1256. The examiner can normally be reached on Monday-Friday 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Jill Warden
Supervisory Patent Examiner
Technology Center 1700

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APPLICATION NO/ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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03222004

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Application Serial No. 09/446,323 was inadvertently abandoned on December 14, 2004. The abandonment is hereby rescinded and a Non-Final rejection is attached this communication.